

Shannon Carter # 70773
 P.O. Box 650
 Indian Springs N.V. 89070

Pro-Se

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UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

Shannon Carter, Plaintiff

Case No. 2:17-CV-01628-RFB-GWF

BRIEF IN SUPPORT OF PLAINTIFFS MOTION FOR
 PARTIAL SUMMARY JUDGMENT

vs.

S. Bean et al.,

Defendant

STATEMENT OF THE CASE.

This is a 1983 action filed by a prisoner at High Desert State Prison seeking damages, a declaratory judgment, and injunctive relief based on Deliberate and Indifferent to Plaintiffs serious medical need in violation of the 8th amendment, Retaliation 1st amendment, 14th Due Process and 14th Equal Protection. In this motion the Plaintiff seeks Summary Judgment on his claims arising from interfering with prescribed treatment Delaying and failing, denying medical treatment Resulting in unnecessary wanton infliction of Pain I.E. Bleeding gums, Swelling jaw chipping tooth and "excruciating Pain" for over a year and 1/2.

STATEMENT OF FACTS.

As set forth in the accompanying declaration of the Plaintiff, Shannon Carter he was Denied medical treatment on 2/1/17 resulting in being Subjected to over a year and a 1/2 of unnecessary wanton infliction of Pain Due solely to the interference delay and refusal of medical treatment by HDSP Dental program.

(1-55)

ARGUMENT.

POINT 1

THE CONDUCT OF NDOC HDSP DENTAL PROGRAM AND ALL NAMED DEFENDANTS WAS DELIBERATE AND INDIFFERENT TO PLAINTIFFS SERIOUS MEDICAL NEEDS IN VIOLATION OF THE 8TH AMENDMENT OF THE U.S. CONSTITUTION.

The Eighth Amendment to the U.S. Constitution gives convicted inmates the right to adequate medical care. The Supreme court first recognized that inmates have a right to medical care in 1976, in *Estelle v. Gamble*.

"Officials Knowledge of Need"

A. DELIBERATE and INDIFFERENT TO PLAINTIFFS SERIOUS MEDICAL NEEDS

on 4/21/16 The Defendants determined Plaintiff had (3) teeth in which warranted treatment from 4/21/16 till now Plaintiff has informed the defendants of Pain, Chipping teeth, and need and went for treatment through Grievances, Kites, TPO, Face to Face Run-ins, Scheduled appt. State Complaint 1883, Federal Complaint 1983 Ex. Jett V. Penner, 439 F.3d 1091-1098 (9th Cir. 2006) (letter from inmates about his medical conditions put warden and doctor on notice) Reed V. Mc Bride, 178 F.3d 849, 854 (7th Cir. 1999) inmates three letters of complaint put officials on notice of his medical problem

"Serious Medical Need"

B. DELIBERATE AND INDIFFERENT TO PLAINTIFFS SERIOUS MEDICAL NEEDS

NDOC HDSP Medical Physician determined Plaintiff needed treatment to (3) teeth. While the Supreme court has not yet addressed this, lower courts have defined "serious" in two different ways. The first definition states that a medical need is 'serious' when it has been diagnosed by a physician as mandating treatment or... is so obvious that even a lay person would easily recognize the necessity for a doctor's attention" *Hill V. DeKalb Regional Youth Detention Ctr.*, 40 F.3d 1176 1187 (11th Cir 1994) A lay Person is Someone from ordinary life.

"Failure to Provide Treatment"

C. DELIBERATE AND INDIFFERENT TO SERIOUS MEDICAL NEEDS

In the instant case NDOC Placed Plaintiff on dental Sick call list for prescribed medical treatment NDOC Policies and Procedures requires inmates recommend / Scheduled medical treatment to (1) Be treated for recommend / scheduled treatment or, (2) Sign Release of liability form, Plaintiff has not been given either one by NDOC resulting in the denial interfering and Delay of medical treatment. The Supreme Court wrote that the Constitution Prohibits officials from intentionally, denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. *Estelle V. Gamble*, 429 U.S. at 104-05

Lancaster V. Monroe County, 116 F.3d at 1425 clearly established that an official acts with deliberate indifference when he knows that an inmate is in serious need of medical care, but fails or refuses to obtain medical treatment for the inmate.

"Causation and Injury"

D. DELIBERATE AND INDIFFERENT TO SERIOUS MEDICAL NEEDS

In the instant case the defendants determined that Plaintiff had (3) infected teeth that warranted treatment. Plaintiff has informed the defendants of Bleeding gum, Swelling jaw, High Blood Pressure, Stress, two Attempts of suicide and Chipping teeth due to decaying from left in Plaintiff's mouth for over a year and a 1/2 Subjecting Plaintiff to Substantial, "Extraordinary" "unnecessary and wanton infliction of pain" *Chance V. Armstrong*, 143 F.3d 698, 703 (2d Cir 1998) (as a result of officials alleged failure to treat cavity, inmate suffered extreme pain, his teeth deteriorated, and he has been unable to eat properly") *Moore V. Jackson*, 123 F.3d 1082, 1086 (8th Cir. 1997) (It took from April 1994 until December 1994 for inmate to receive adequate treatment for a toothache. The tooth became infected and ultimately required extraction. Something appears wrong with the dental care system") *Boyd V. Knox* 47 F.3d 966, 969 (8th Cir. 1995) officials failed to send referral for dental care for (3) three weeks after observing inmate's swollen, infected and painful mouth, "a three week

1 delay in dental care, coupled with knowledge of the inmate-patients suffering
 2 can support a finding of an Eighth amendment Violation. Patterson v. Pearson,
 3 19 F.3d 439, 440 (8th Cir. 1994) (holding that one-month delay in treatment of
 4 infected tooth and swollen jaw could be a Violation)

5 In the absence of medical treatment and Dec-25-23 Release of liability
 6 form on 2/1/17 coupled with the knowledge of a serious medical need extreme
 7 Pain and Chipping teeth of Plaintiff the defendant's action amounted to intentionally
 8 interfering with prescribed treatment delaying and refusing Plaintiff medical
 9 treatment in Violation of the 8th amendment Right to the U.S. Constitution
 10 as a matter of law.

11 Point II.

12 DEFENDANTS THAT DIDN'T DIRECTLY VIOLATE PLAINTIFFS
 13 RIGHTS ON 2/1/17 ARE LIABLE FOR DELIBERATE AND INDIFFERENT
 14 TO PLAINTIFFS SERIOUS MEDICAL NEEDS BY REASON OF THEIR
 15 FAILURE TO CORRECT THEM ON JUDICIAL AND ADMINISTRATIVE
 16 APPEALS

17 Although with the exception of defendant S. Bean and Dr. Butler the remaining
 18 defendants didn't violate Plaintiff's 8th amendment Rights on 2/1/17 but became responsible
 19 for them when they failed to correct them in the course of their Supervisory responsibilities
 20 and affirmed the arbitrary actions which interfered, delayed and denied Plaintiff
 21 medical treatment to a serious medical need in which they determined warranted
 22 treatment. Hicks v. Fry, 992 F.2d 1450, 1455 (6th Cir. 1993) (noting that an official
 23 may be held liable for failure to supervise and control subordinates even though the
 24 official was not directly involved in the specific incident of misconduct) In particular,
 25 wardens and other high-level prison officials who are designated to decide appeals
 26 have the duty to conduct at least a "minimal investigation" when confronted with evidence
 27 of due process violations, and they may be held liable for failing to perform this duty. Siva v.
 28 Morton, 380 F.3d 57, 60 (2d Cir. 2004)

1 *Wright v. Smith*, 21 F.3d 496, 502 (2nd Cir. 1994) Holding that a Supervisor may be
 2 held personally responsible for the deprivation of constitutional rights if, inter
 3 alia, the Supervisor (a) is aware of the deprivation and fails to remedy it or
 4 (b) created, or allowed to continue, a policy in which unconstitutional practices
 5 occurred)

6 It cannot be argued that the defendants did not learn of the Deliberate
 7 and Indifferent action of HDSO Dental Program Interfering, Delaying, and
 8 refusing to treat Plaintiff's serious medical needs in this case all apparent
 9 from the documents created in the course of Plaintiff seeking medical treatment
 10 to the very teeth the defendant determined warranted treatment over 2 1/2
 11 years ago but have "yet" to treat. Nor can it be argued that this is merely a
 12 case of "knowledge and acquiescence" in a Subordinated Violation, which may not itself
 13 violate the Constitution. See *Ascroft v. Iqbal*, U.S. ___, 129 S.Ct. 1937, 1949 (2009)
 14 This is a case where the defendants had a personal "obligation, responsibility and
 15 a job to do, and they did not do it", and their failure to do their job was "so
 16 likely to result in the violation of the inmates constitutional rights is sufficient
 17 to establish liability under 42 U.S.C. 1983 *Jett v. Penner*, 439 F.3d 1091, 1098 (9th Cir 2006).
 18 (Prison administrators "are liable for deliberate indifference when they knowingly fail to respond
 19 to an inmate's requests for help") *Thompson v. Upshur County, Texas*, 245 F.3d 447, 459 (5th Cir 2001)
 20 *Aswegen v. Bruhl*, 965 F.2d 676, 677 (8th Cir 1992)

21 CONCLUSION.

22 For the foregoing reasons, the court should grant partial Summary
 23 Judgment on liability to the Plaintiff on his Deliberate and Indifference to
 24 Serious medical needs claims. The amount of damages due to the plaintiff
 25 must be determined at trial. *Patterson v. Coughlin*, 905 F.2d 564,
 26 570 (2d Cir. 1990)

Respectfully Submitted,

Shannon Carter

Shannon Carter #70773
 P.O. Box 650
 Indian Springs, NV,
 89070.

28 Dated this 1st day of October 2018,